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U.S. COURT OF APPEALS

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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

HUMBERTO IRRA MENDIOLA, Petitioner-Appellant, v. MICHAEL B. MUKASEY, Attorney General, Respondent-Appellee.	No. 06-55740 D.C. No. CV-04-03270-NM MEMORANDUM [*]

Appeal from the United States District Court
for the Central District of California
Nora M. Manella, District Judge, Presiding

Argued and Submitted February 7, 2008
Pasadena, California

Before: PREGERSON, ARCHER [**], and WARDLAW, Circuit Judges.

[*] This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

[**] The Honorable Glenn L. Archer, Jr., Senior United States Circuit Judge for the Federal Circuit, sitting by designation.

Humbert Irra Mendiola ("Mendiola") appeals the district court's dismissal of his Petition for Writ of Habeas Corpus. Mendiola asserts that the failure of the Immigration and Naturalization Service ("INS")[1] to notify his counsel of Mendiola's impending detention violated his due process rights.

In order to prevail on a due process challenge to a deportation proceeding, the petitioner must show error and substantial prejudice. See Lata v. INS, 204 F.3d 1241, 1246 (9th Cir. 2000). Assuming, without deciding, that Mendiola was represented by counsel and that the failure to notify such counsel was a violation of Mendiola's due process rights, Mendiola failed to show the requisite prejudice.

Mendiola's argument that he was prejudiced because he was deprived of the opportunity to seek a stay of deportation lacks merit. In fact, Mendiola obtained a stay of removal by filing his fifth Petition for Review with this court on February 10, 2004, the day he was taken into custody. Additionally, there is nothing in the record suggesting Mendiola could not have sought a stay prior to this date, since he had done so on four prior occasions by filing Petitions for Review with this court. Mendiola's argument that he was prejudiced by being unable to proceed with his family petition and subsequent adjustment of status is similarly misplaced. Being

[1]INS has since been abolished and its functions transferred to the Department of Homeland Security. To avoid confusion, INS is used throughout this disposition.

taken into custody did not affect Mendiola's request for an alien relative visa. Mendiola's first family petition was denied prior to his detention due to Mendiola's failure to appear at his hearing. Mendiola's second family petition, filed after Mendiola had been taken into custody, was granted.

Finally, there is no support for Mendiola's assertion that his being taken into custody without advance notice prevented him from asking INS to join in a motion to reopen proceedings before the BIA. Nothing appears to have prevented Mendiola from asking INS to join a motion to reopen prior to his detention. Mendiola clearly was familiar with the various avenues available to challenge and delay his deportation, having filed a total of five Petitions for Review with this court and four Motions to Reopen with the BIA.

Because Mendiola failed to show that he was prejudiced by any purported violations of his due process rights, we affirm the district court's dismissal of his habeas petition.

AFFIRMED.